# Mahabuilders Sdn Bhd v Pentadbir Tanah Johor Bahru & Anor

HIGH COURT (JOHOR BAHRU) — ORIGINATING SUMMONS NO 24M-359–11 OF 2012
GUNALAN MUNIANDY JC
3 JULY 2013

*Land Law — Caveats — Caveatable interest — Negotiation to sell property — Cheques sent as deposit for proposed purchase — Dispute arose between parties — Whether parties reached consensus on sale and purchase agreement — Sale aborted and cheques deposit returned — Whether agreement executed — Caveatable interest to execute agreement — Application for extension of validity period of private caveat — National Land Code s 326(2)*

The plaintiff and the second defendant had negotiated for the latter to sell its property to the former. The second defendant alleged that the sale was subject to the execution of an agreement on terms and conditions to be agreed upon between the parties. Subsequently, the plaintiff sent a cheque amounting to RM1,900,000 to the second defendant as 10% deposit for the proposed purchase. However, dispute arose between the parties as to the terms and conditions of the sale and purchase agreement ('SPA') and the draft SPA sent by the second defendant was returned with substantial amendments. Since the parties could not reach consensus on the SPA, the second defendant aborted the sale and the cheque deposit was returned to the plaintiff. Subsequent attempts by the latter to send the cheque deposit in the same sum to the former did not succeed and the second defendant never executed any SPA with the plaintiff. The second defendant contended that the plaintiff had no caveatable interest to enter the caveat over the subject land. In this originating summons ('OS'), the plaintiff applied for an extension of the validity period of a private caveat that the plaintiff had entered on a piece of land owned by the second defendant pursuant to s 326(2) of the National Land Code ('NLC').

**Held,** dismissing the application with costs of RM4,000:

(1) Regardless of the issue of caveatable interest, the most significant fact in this case was that the caveat had been removed upon expiry of the notice for removal of the caveat. It is trite law that the court's power to extend a caveat under s 326(2) of the NLC is limited to a caveat that is still in force or 'alive' and does not extend to a caveat that had already been canceled or removed (see para 5).

(2) The caveat in this case lapsed upon the expiry of the Form 19C notice

two months after it was served without any court order extending the validity of the caveat. It was, thus, incumbent upon the registrar to cancel the caveat and remove it from the register as it was no longer in force. Any order of court extending its validity had to be obtained and served on the Registrar during its period of validity and not after it has lapsed. The OS had, accordingly, been rendered academic and redundant. The registrar of titles had rightly acted within his powers in accordance with the provisions of s 326(1), (1A) and (3) of the NLC to remove the caveat and cancel the entry from the registrar document of title. Upon the lapse of the caveat after expiry of the notice of intended removal, it no longer had any effect or validity (see paras 6 & 8).

**[Bahasa Malaysia summary**

Plaintif dan defendan kedua telah berunding untuk defendan kedua menjual hartanahnya kepada plaintif. Defendan kedua mendakwa bahawa jualan tersebut tertakluk kepada pelaksanaan perjanjian atas terma dan syarat-syarat yang akan dipersetujui di antara kedua pihak. Plaintif kemudiannya menghantar cek berjumlah RM1,900,000 kepada defendan kedua sebagai 10% deposit untuk pembelian yang dicadangkan. Walau bagaimanapun, pertikaian berbangkit di antara pihak-pihak terhadap terma dan syarat perjanjian jual dan beli ('SPA') dan draf SPA yang dihantar oleh defendan kedua dikembalikan dengan pindaan yang substansial. Memandangkan pihak-pihak tidak mencapai persetujuan atas SPA, defendan kedua membatalkan jualan tersebut dan deposit cek dikembalikan kepada plaintif. Percubaan kemudiannya oleh plaintif untuk menghantar deposit cek dalam jumlah yang tersebut kepada defendan kedua tidak berjaya dan defendan kedua tidak melaksanakan apa-apa SPA dengan plaintif. Defendan kedua berhujah bahawa plaintif tidak mempunyai kepentingan kaveat untuk memasukkan kaveat ke atas tanah tersebut. Dalam saman pemula ini ('SP'), plaintif memohon untuk pelanjutan tempoh sah kaveat persendirian yang dimasukkan oleh plaintif ke atas sebidang tanah yang dimiliki oleh defendan kedua berikutan s 326(2) Kanun Tanah Negara ('KTN').

**Diputuskan,** menolak permohonan dengan kos sebanyak RM4,000:

(1) Tanpa mengira isu kepentingan kaveat, fakta penting dalam kes ini adalah bahawa kaveat telah dipotong selepas habisnya tempoh notis untuk pemotongan kaveat. Adalah undang-undang nyata bahawa kuasa mahkamah untuk melanjutkan kaveat di bawah s 326(2) KTN adalah terhad kepada kaveat yang masih berkuat kuasa atau 'alive' dan tidak dilanjutkan kepada kaveat yang telah dibatalkan atau dipotong (lihat perenggan 5).

(2) Kaveat dalam kes ini luput selepas tamat tempoh notis Borang 19C dua bulan selepas ia diserahkan tanpa apa-apa perintah mahkamah melanjutkan kesahan kaveat tersebut. Oleh itu, adalah wajib ke atas

pendaftar untuk membatalkan kaveat dan memotongnya daripada pendaftaran memandangkan ia bukan lagi berkuat kuasa. Apa-apa perintah mahkamah melanjutkan kesahannya telah diperolehi dan diserahkan ke atas pendaftar semasa tempoh kesahannya dan bukan selepas ia luput. SP oleh itu telah dijadikan akademik dan tidak diperlukan. Pendaftar hak milik telah dengan betul bertindak dalam kuasanya berikutan peruntukan s 326(1), (1A) dan (3) KTN untuk memotong kaveat dan membatalkan kemasukan daripada dokumen pendaftar hak milik. Atas keluputan kaveat selepas tamat tempoh notis untuk pemotongan, ia bukan lagi mempunyai apa-apa kesan atau kesahan (lihat perenggan 6 & 8).]

**Notes**

For a case on caveatable interest, see 8(1) *Mallal's Digest* (4th Ed, 2013 Reissue) para 2573.

**Cases referred to**

*Manian Kandasamy v Pentadbir Tanah Daerah Raub & Anor* [2009] MLJU 544; [2011] 7 CLJ 583, CA (refd)

*Murugappa Chettiar Lakshamanan v Lee Teck Mook* [1995] 1 MLJ 782; [1995] 2 CLJ 545, CA (refd)

**Legislation referred to**

National Land Code ss 323(1), 326, 326(1), (1A), (1B), (2), (3), Form 19C

*L Parthiban (Shobana Mala a/p Krishnan with him) (L Parthiban, Zulkiflee & Syed Sadik) for the plaintiff.*

*Wong Kim Fatt (Wong Boon Chong with him) (Gulam & Wong) for the first defendant.*

*Anis Wahidah bt Mohamed (State Legal Counsel, State Attorney General's Chambers, Johor) for the second defendant.*

**Gunalan Muniandy JC:**

**[1]** This is an originating summons ('OS') filed on 30 November 2012 by the plaintiff under s 326(2) of the National Land Code ('NLC') for an extension of the validity period of a private caveat that the plaintiff had entered on a piece of land owned by the second defendant. Before this OS could be heard, the Registrar of Titles removed the caveat on 10 December 2012.

**[2]** The background to the entry of the caveat by the plaintiff is a negotiation between the plaintiff and the second defendant for the latter to sell its property to the former. According to the second defendant the sale was subject to the execution of an agreement on terms and conditions to be agreed upon between the parties.

**[3]** Pursuant to the above negotiations, the plaintiff sent to the second defendant a cheque amounting to RM1,900,000 as 10% deposit for the proposed purchase which was accepted by the second defendant's solicitors. However, dispute arose between the parties as to the terms and conditions of the sale and purchase agreement ('S&P') to be executed. The draft S&P sent by the second defendant's solicitors to the plaintiff's solicitors was returned with substantial amendments. As a 'result, the parties could not reach consensus on the S&P. The second defendant eventually aborted the sale and its solicitors returned the cheque deposit of RM1,900,000 to the plaintiff's solicitors. Subsequent attempts by the latter to send the cheque deposit in the same sum to the former did not succeed. For all intents and purposes the second defendants never executed any S&P with the plaintiff. There was, therefore, no concluded agreement to sell the subject property as consensus ad idem had not been reached between the parties on the T&C. It was principally on this ground that the second defendant contended that the plaintiff had no caveatable interest to enter the caveat over the subject land. The second defendant relied on the Court of Appeal case of *Murugappa Chettiar Lakshamanan v Lee Teck Mook* [1995] 1 MLJ 782; [1995] 2 CLJ 545 where it was held, inter alia:

> The principles formulated in the case of *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* as applied to the present appeal require an investigation into the following matters. First, whether the respondent, on the material set out by him in his application under s 323(1) of the National Land Code 1965, has disclosed a caveatable interest. Secondly, if he has established a caveatable interest, whether the evidence he produced before the learned judicial commissioner in support of his claim to that caveatable interest discloses a serious question to be tried. Lastly, whether the balance of justice lies in favour of the caveat remaining on the register pending the disposal of the suit.
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> It is clear that nowhere in the application, for the entry of the caveat, is there an assertion of a concluded contract for the sale and purchase of the land in question. In the absence of such an assertion it cannot be said that the respondent has a claim to the title to the land.
>
> It is axiomatic that negotiations for a contract, however advanced, do not amount to a contract. Until and unless a purchaser has an enforceable contract for the sale of land, he can lay no claim to the title to registered land. A fortiori, he has no interest that is capable of protection by the entry of a caveat.

**[4]** Similarly, in the instant case, a binding and enforceable contract had not arisen yet for the plaintiff to lay any claim to the title to the registered land to confer on the plaintiff a caveatable interest. As such, the plaintiff did not have the requisite interest to be vested with the right to enter the said private caveat.

**[5]** Regardless of the issue of caveatable interest, the most significant fact in this case is that the caveat has been removed upon expiry of the notice for

removal of the caveat ( Form 19C of the NLC). It is trite law that the court's power to extend a caveat under s 326(2) of the NLC, is limited to a caveat that is still in force or 'alive' and does not extend to a caveat that has already been cancelled or removed. In *Manian Kandasamy v Pentadbir Tanah Daerah Raub & Anor* [2009] MLJU 544; [2011] 7 CLJ 583, the Court of Appeal held:

> The popular meaning, attributed to the word 'extend' in s 326(2) of the Code is that it enlarges or gives further duration to any existing right rather than re-vests an expired right. We are in agreement with the judicial commissioner that the courts power to extend a caveat under s 326(2) of the Code was only exercisable where a caveat is still 'alive' and was no longer exercisable after a caveat had been cancelled.
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> On the facts of this case the land administrator had clearly acted within the powers conferred upon him by s 326(1N) of the Code in removing the appellant's fourth private caveat for failure to furnish a court order within the time specified. The judicial commissioner was right in ruling that once a private caveat has been removed, the Code does not give the court power to revive, renew/continue a private caveat which has been cancelled. It is not within the inherent jurisdiction of the court to make orders which go beyond the limit of the powers expressly given to it by statute.

**[6]** The caveat in this case lapsed on 10 December 2012 upon the expiry of this Form 19C notice two months after it was served without any court order extending the validity of the caveat. Service of the Form 19C notice was not in dispute. It was, thus, incumbent upon the registrar to cancel the caveat and remove it from the register as it was no longer in force. Any order of court extending its validity has to be obtained and served on the registrar during its period of validity and not after it has lapsed. The OS had, accordingly, been rendered academic and redundant.

**[7]** Section 326 of the NLC, in so far as relevant to the present issue in dispute states:

> 326 Removal of private caveats by Registrar.
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> (1) Any person or body whose land or interest is bound by a private caveat may at any time apply in Form 19H to the Registrar for its removal, and such application shall be accompanied by the prescribed fee.
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> …
>
> (IB) In the case in which a notice of intended removal in Form 19C has been served under sub-section (1A), the caveat shall lapse and be of no effect at the expiry of two months specified in the notice unless before the expiry of that period the Registrar shall have been served with an order of the Court extending the time provided in the said notice.
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> …

(3) The Registrar shall remove. any caveat pursuant to this section by cancelling the entry thereof on the register document of title, and noting thereon the reason for the cancellation and the date thereof.

CONCLUSION

**[8]** The Registrar of Titles had rightly acted within his powers in accordance with the provisions of s 326(1), (1A) and (3) of the NLC, to remove the caveat and cancel the entry from the registrar document of title. Upon the lapse of the caveat after expiry of the notice of intended removal, it no longer had any effect or validity.

**[9]** For the foregoing reasons and in view of established principles, I held that this application was clearly unsustainable in law and on the facts. I, accordingly, dismissed in with costs of RM4,000.

*Application dismissed with costs of RM4,000.*

Reported by Afiq Mohamad Noor